REMARKS

A summary of the status of the claims in the present response is presented below.

Claims 1, 11, 14, 15, and 18 are currently amended.

Claims 2-4, 9, 10, 16, and 17 are previously presented claims.

Claims 5-8, 12, 13, 19, and 20 are originally presented claims.

Claims 1-20 are thus currently pending in this Application.

35 U.S.C. § 102(b)

Claims 1-5, 7-10, and 14-17 were rejected under 35 U.S.C. § 102(b) as being anticipated by Jorgensen (US Patent No. 2,617,005). Applicants have amended independent Claims 1, 14, and 15. Claims 2-5, 7-10, and 16-17 are dependent claims and are ultimately dependent upon amended Claims 1, 14, and 15, respectively. Support for these amendments to these Claims are set forth in paragraph numbers 0033 and 0034 of the Applicants' specification and in Figures 1 and 2. Jorgensen discloses a warming device that has a tray-like base member containing a material that is a heat and electrical insulator and upon which rests a heating element having a center body plate. The tray of Jorgensen is surrounded by side walls. At the center of the body plate is a single pole single throw normally open spring switch that includes an upstanding operating lever which is engaged from above by the free end portion of an elongated spring arm. Jorgensen states that the opposite end portion of the arm is riveted or otherwise rigidly secured to a side wall of the tray. Jorgensen teaches that the side walls of the tray have their upper margins defined by outwardly disposed flanges to which are rigidly secured to the marginal portions of a cover. Jorgensen simply shows that the opposite end of the spring arm is rigidly secured to the side wall of the tray.

In contrast to Jorgensen, Claims 1, 14, and 15, as amended, and Claims 2-5, 7-10, and 16-17, through their ultimate dependency upon amended Claims 1, 14, and 15, respectively, recites either a patient-activated temperature controlled surface, an animal bed, or a method of providing comfort to patient, that has a floor that moves in a down and an up direction, a temperature source that is in juxtaposition to the movable floor and surrounded by at least one wall, the temperature source capable of supplying either heat or cold, or both, to the floor, and an actuator element that is capable of controlling the

flow of an electrical non-direct current from an electric utility to the temperature source for turning on and off the temperature source, wherein the actuator element is (i) a separate and non-integral component in relationship to the temperature source, and (ii) is in juxtaposition to the floor or the temperature source and is unsecured to the wall, wherein the actuator element is activated and deactivated by the presence or absence of the weight of the patient upon the movable floor, and an electrical cord for supplying the non-direct electrical current from the electric utility to the temperature source and wherein the actuator element is connected to the electrical cord. Applicants have amended Claims 1-5, 7-10, and 14-17 to further recite that the temperature source is surrounded by at least one wall and that the actuator element is unsecured to the wall. For a claim to be anticipated by a reference under 35 U.S.C. § 102(b), the reference must teach or suggest all of the limitations of the claim. Jorgensen does not teach or suggest that the spring arm is unsecured to the side wall. Jorgensen does not teach or suggest a temperature source capable of supplying either heat or cold to the floor. Jorgensen is only concerned with providing a warming device wherein the spring arm is secured to the wall of the device and wherein the warming device has one or more heating elements to contribute heat. The warming device of Jorgensen has flanged walls for securing a cover to the device. Jorgensen does not suggest all of the limitations of rejected Claims 1-5, 7-10, and 14-17, as amended. Jorgensen does not recite a patient-activated temperature controlled surface, an animal bed, and a method of providing comfort to a patient, having a floor that moves in a down and an up direction, a temperature source that is in juxtaposition to the movable floor and surrounded by at least one wall, the temperature source capable of supplying either heat or cold, or both, to the floor, and an actuator element that is (i) a separate and non-integral component in relationship to the temperature source, and (ii) is in juxtaposition to the floor or the temperature source and is unsecured to the wall. For these reasons, Applicants request that the rejection under 35 U.S.C. § 102(b) based upon Jorgensen be withdrawn and that Claims 1-5, 7-10, and 14-17, as amended, be allowed.

Claim Rejection - 35 U.S.C. § 103(a)

Claim 6 was rejected under 35 U.S.C. 103(a) for allegedly being unpatentable over Jorgensen in view of Goldston et al. (US Patent No. 5,303,485. Claim 6 has been amended through its dependency upon Claim 1 as amended. Applicants comments made hereinabove with regard to Jorgensen are equally applicable at the present juncture with regard to Claim 6. The Office Action states that Jorgensen fails to disclose the use of a specific actuator. Goldston et al. is relied upon for its disclosure of the use of a transistor in the place of a pressure sensitive switch. The Office Action states that it would have been obvious to one of ordinary skill in the art at the time of the invention to provide a transistor as the actuator.

In contrast to the combination of Jorgensen and Goldston et al., Claim 6 as amended via its dependency upon Claim 1, as amended, recites that the temperature source is in juxtaposition to the movable floor and surrounded by at least one wall, and that the actuator element is a separate and non-integrated component in relationship to the temperature source and is in juxtaposition to the floor or the temperature source and not secured to the wall. Jorgensen requires that the spring arm of the spring switch be rigidly secured to the wall of the tray member. Jorgensen does not disclose that the actuator element be unsecured from the wall of the device. It is well settled that the mere fact that references can be combined does not make the combination obvious unless the art also teaches or suggests the desirability of the combination. This appears to be applicable in the present situation wherein any reasonable interpretation of the individual references would lead one skilled in the art away from the Applicants' invention as there is no teaching or suggestion in the references cited to teach or suggest the combination unless one employs impermissible hindsight. Further, even if it were proper to so combine the cited references, the Applicants further submit that effecting such a combination of the references as suggested by the Office Action would not result in a patient-activated temperature controlled surface as recited in Claim 6, as amended through its dependency upon Claim 1 as amended, for the reasons stated *supra*. Such a combination would require a partial deconstruction of the references in a manner not taught or suggested by

the references in order to meet the terms as recited in pending Claim 6. Because all of the limitations of Applicants' Claim 6 are not taught or suggested by the combination of Jorgensen and Goldston et al., Applicants submit that no prima facie case of obviousness exists. Applicants request that the rejection under 35 U.S.C. § 103 (a) over Jorgensen in view of Goldston et al. be withdrawn, and that now pending Claim 6 be reconsidered and allowed at an early date.

Claims 11, 12, 18, and 19 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Jorgensen in view of Peeples et al. (US Patent No. 6,237,531). Applicants comments made above with regard to Jorgensen as applied to Claims 1 and 15, as amended, respectively, are equally applicable at the present juncture. The Office Action states that Jorgensen fails to disclose the specific structure of the animal bed including a wall and opening. Peeples et al is relied upon for its disclosure of an animal bed having a wall and an opening. The Office Action states that it would have been obvious to provide an animal bed of Jorgensen with the features of Peeples et al. Claims 11 and 12, and 18 and 19, ultimately depend from amended independent Claims 1 and 15, respectively, and include all of the limitations of amended Claim 1 and 15, respectively. It is well settled that the mere fact that references can be combined does not make the combination obvious unless the art also teaches or suggests the desirability of the combination. This appears to be applicable in the present situation wherein any reasonable interpretation of the individual references would lead one skilled in the art away from the Applicants' invention as there is no teaching or suggestion in the references cited to teach or suggest the combination unless one employs impermissible hindsight. Further, even if it were proper to so combine the cited references, the Applicants further submit that effecting such a combination of the references as suggested by the Office Action would not result in a patient-activated temperature controlled surface as recited in Claims 11 and 12, and the method as recited in Claims 18 and 19, as amended through their dependency upon Claims 1 and 15, as amended, respectively, for the reasons stated *supra*. Such a combination would require a partial deconstruction of the references in a manner not taught or suggested by the references in order to meet the terms as recited in pending Claims 11, 12, 18, and 19. Because all of

the limitations of Applicants' Claims 11, 12, 18, and 19 are not taught or suggested by the combination of Jorgensen and Peeples et al., Applicants submit that no prima facie case of obviousness exists. Applicants request that the rejection under 35 U.S.C. § 103 (a) over Jorgensen in view of Peeples, et al. be withdrawn, and that now pending Claims 11, 12, 18, and 19 be reconsidered and allowed at an early date.

Claims 13 and 20 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Jorgensen in view of Elbert et al. (US Patent No. 3,041,441). Applicants' comments made above with regard to Jorgensen as applied to Claims 1 and 15, as amended, respectively, are equally applicable at the present juncture. Claims 13 and 20, ultimately depend from amended independent Claims 1 and 15, respectively, and include all of the limitations of amended Claims 1 and 15, respectively. The Office Action states that Jorgensen discloses preset thermostats. Elbert et al. is relied upon for its disclosure of an adjustable thermostat. The Office Action states that it would have been obvious to provide an adjustable thermostat in Jorgensen to better control the heating of the animal bed. It is well settled that the mere fact that references can be combined does not make the combination obvious unless the art also teaches or suggests the desirability of the combination. This appears to be applicable in the present situation wherein any reasonable interpretation of the individual references would lead one skilled in the art away from the Applicants' invention as there is no teaching or suggestion in the references cited to teach or suggest the combination unless one employs impermissible hindsight. Further, even if it were proper to so combine the cited references, the Applicants further submit that effecting such a combination of the references as suggested by the Office Action would not result in a patient-activated temperature controlled surface as recited in Claim 13, and the method as recited in Claim 20, as these claims are amended through their dependency upon Claims 1 and 15, as amended, respectively, for the reasons stated *supra*. Such a combination would require a partial deconstruction of the references in a manner not taught or suggested by the references in order to meet the terms as recited in pending Claims 13 and 20. Because all of the limitations of Applicants' Claims 13 and 20 are not taught or suggested by the combination of Jorgensen and Elbert et al., Applicants submit that no prima facie case of

obviousness exists. Applicants request that the rejection under 35 U.S.C. § 103 (a) over Jorgensen in view of Elbert, et al. be withdrawn, and that now pending Claims 13 and 20 be reconsidered and allowed at an early date.

Applicants respectfully submit that the cited references do not teach or suggest the present invention, and that the subject matter of the claimed invention would not have been obvious to one having ordinary skill in the art. For the above reasons, Applicants courteously request that the rejections under 35 U.S.C. § 103(a) be withdrawn and that all pending claims be allowed at an early date.

CONCLUSION

It is respectfully submitted that Applicants' pending Claims 1-20 illustrate a patentable patient activated temperature-controlled surface, animal bed, and method of providing comfort to a patient employing the patient activated temperature-controlled surface, respectively, that are not taught or suggested by any of the art of record. Applicants respectfully submit that the remarks set forth in this paper place this Application in a condition for allowance and such action is respectfully requested at an early date.

AUTHORIZATION

Applicants believe that no further government fees are due for this Response and Amendment.

The Commissioner is hereby authorized to charge any necessary additional fees associated with this paper to Deposit Account No. 02-4553.

Respectfully submitted,

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